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AMENDED IN SENATE JULY 16, 2001

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CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 583

Introduced by Assembly Member Jackson

February 21, 2001

An act to amend Sections 1101, 2100, 2102, 2105, 2106, 2107, and 2122 of the Family Code, relating to dissolution of marriage.

LEGISLATIVE COUNSEL'S DIGEST

AB 583, as amended, Jackson. Dissolution of marriage: community property.

Existing law requires a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest to be made in a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties. Existing law provides that each party has a continuing duty to update and augment that disclosure to the extent there have been any material changes, as specified.

This bill would modify the provision regarding each party's continuing duty to update and augment his or her disclosure by providing that each party shall do so immediately, fully, and accurately

upon material change. The bill would also make related, conforming changes.

Existing law requires each party, from the date of separation to the date of the distribution of the community property, to provide the other party with an accurate and complete written disclosure of any investment opportunity that presents itself after the date of separation, but that results from any investment of either spouse from the date of marriage to the date of separation, inclusive. Existing law requires that written disclosure be made in sufficient time for the other spouse to make an informed decision as to whether he or she desires to participate in the investment opportunity.

This bill would additionally require the disclosure to contain any ~~business or other potential investment opportunity, business opportunity, or~~ income-producing opportunity that presents itself after the date of separation, but that results from any investment, business activity, ~~training or education or other income-producing opportunity~~ of either spouse from the date of marriage to the date of separation, inclusive. The bill would require that the written disclosure be made in time for the other spouse to make an informed decision as to whether he or she desires to participate in the business or other potential income-producing opportunity, and for the court to resolve any dispute regarding the right of the other spouse to participate in the opportunity. The bill would also provide that specified standards apply to all activities that affect the assets or liabilities of the other spouse, and the income or expenses of the party.

Existing law requires each party to a proceeding for dissolution or nullity of marriage or legal separation of the parties to serve on the other party, under specified circumstances, a final declaration of disclosure to be executed under penalty of perjury on a form prescribed by the Judicial Council.

This bill would revise provisions authorizing a stipulation of a mutual waiver of the requirement governing a final declaration of disclosure. The bill would require a court to set aside a judgment upon failure to comply with all disclosure requirements, and would revise the sanctions for violation of the requirements governing a preliminary or final declaration of disclosure. The bill would also make related, conforming changes. By revising the elements of perjury, this bill would alter the definition of a crime and thus impose a state-mandated local program.



The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1101 of the Family Code is amended to
2 read:

3 1101. (a) A spouse has a claim against the other spouse for
4 any breach of the fiduciary duty that results in impairment to the
5 claimant spouse's present undivided one-half interest in the
6 community estate, including, but not limited to, a single
7 transaction or a pattern or series of transactions, which transaction
8 or transactions have caused or will cause a detrimental impact to
9 the claimant spouse's undivided one-half interest in the
10 community estate.

11 (b) A court may order an accounting of the property and
12 obligations of the parties to a marriage and may determine the
13 rights of ownership in, the beneficial enjoyment of, or access to,
14 community property, and the classification of all property of the
15 parties to a marriage.

16 (c) A court may order that the name of a spouse shall be added
17 to community property held in the name of the other spouse alone
18 or that the title of community property held in some other title form
19 shall be reformed to reflect its community character, except with
20 respect to any of the following:

21 (1) A partnership interest held by the other spouse as a general
22 partner.

23 (2) An interest in a professional corporation or professional
24 association.

25 (3) An asset of an unincorporated business if the other spouse
26 is the only spouse involved in operating and managing the
27 business.

28 (4) Any other property, if the revision would adversely affect
29 the rights of a third person.

(d) (1) Except as provided in paragraph (2), any action under subdivision (a) shall be commenced within three years of the date a petitioning spouse had actual knowledge that the transaction or event for which the remedy is being sought occurred.

(2) An action may be commenced under this section upon the death of a spouse or in conjunction with an action for legal separation, dissolution of marriage, or nullity without regard to the time limitations set forth in paragraph (1).

(3) The defense of laches may be raised in any action brought under this section.

(4) Except as to actions authorized by paragraph (2), remedies under subdivision (a) apply only to transactions or events occurring on or after July 1, 1987.

(e) In any transaction affecting community property in which the consent of both spouses is required, the court may, upon the motion of a spouse, dispense with the requirement of the other spouse's consent if both of the following requirements are met:

(1) The proposed transaction is in the best interest of the community.

(2) Consent has been arbitrarily refused or cannot be obtained due to the physical incapacity, mental incapacity, or prolonged absence of the nonconsenting spouse.

(f) Any action may be brought under this section without filing an action for dissolution of marriage, legal separation, or nullity, or may be brought in conjunction with the action or upon the death of a spouse.

(g) Remedies for breach of the fiduciary duty by one spouse, including those set out in Sections 721 and 1100, shall include, but not be limited to, an award to the other spouse of 50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty plus attorney's fees and court costs. The value of the asset shall be determined to be its highest value ~~from the time of nondisclosure to the time of the award. In addition, the court, in its discretion, may assess interest at the date of the breach of the fiduciary duty, the date of the sale or disposition of the asset, or the date of the award by the court.~~

(h) Remedies for the breach of the fiduciary duty by one spouse, as set forth in Sections 721 and 1100, when the breach falls within the ambit of Section 3294 of the Civil Code shall include, but not be limited to, an award to the other spouse of 100 percent,

1 or an amount equal to 100 percent, of any asset undisclosed or
2 transferred in breach of the fiduciary duty.

3 SEC. 2. Section 2100 of the Family Code is amended to read:

4 2100. The Legislature finds and declares the following:

5 (a) It is the policy of the State of California (1) to marshal,
6 preserve, and protect community and quasi-community assets and
7 liabilities that exist at the date of separation so as to avoid
8 dissipation of the community estate before distribution, (2) to
9 ensure fair and sufficient child and spousal support awards, and (3)
10 to achieve a division of community and quasi-community assets
11 and liabilities on the dissolution or nullity of marriage or legal
12 separation of the parties as provided under California law.

13 (b) Sound public policy further favors the reduction of the
14 adversarial nature of marital dissolution and the attendant costs by
15 fostering full disclosure and cooperative discovery.

16 (c) In order to promote this public policy, a full and accurate
17 disclosure of all assets and liabilities in which one or both parties
18 have or may have an interest must be made in the early stages of
19 a proceeding for dissolution of marriage or legal separation of the
20 parties, regardless of the characterization as community or
21 separate, together with a disclosure of all income and expenses of
22 the parties. Moreover, each party has a continuing duty to
23 immediately, fully, and accurately update and augment that
24 disclosure to the extent there have been any material changes so
25 that at the time the parties enter into an agreement for the
26 resolution of any of these issues, or at the time of trial on these
27 issues, each party will have a full and complete knowledge of the
28 relevant underlying facts.

29 SEC. 3. Section 2102 of the Family Code is amended to read:

30 2102. (a) From the date of separation to the date of the
31 distribution of the community or quasi-community asset or
32 liability in question, each party is subject to the standards provided
33 in Section 721, as to all activities that affect the assets and
34 liabilities of the other party, including, but not limited to, the
35 following activities:

36 (1) The accurate and complete disclosure of all assets and
37 liabilities in which the party has or may have an interest or
38 obligation and all current earnings, accumulations, and expenses,
39 including an immediate, full, and accurate update or augmentation
40 to the extent there have been any material changes.

1 (2) The accurate and complete written disclosure of any
2 investment opportunity, business *opportunity*, or other ~~potential~~
3 income-producing opportunity that presents itself after the date of
4 separation, but that results from any investment, significant
5 business activity outside the ordinary course of business, ~~training,~~
6 ~~or education~~ or other income-producing opportunity of either
7 spouse from the date of marriage to the date of separation,
8 inclusive. The written disclosure shall be made in sufficient time
9 for the other spouse to make an informed decision as to whether
10 he or she desires to participate in the investment opportunity,
11 business, or other potential income-producing opportunity, and for
12 the court to resolve any dispute regarding the right of the other
13 spouse to participate in the opportunity. In the event of
14 nondisclosure of an investment opportunity, the division of any
15 gain resulting from that opportunity is governed by the standard
16 provided in Section 2556.

17 (3) The operation or management of a business or an interest
18 in a business in which the community may have an interest.

19 (b) From the date that a valid, enforceable, and binding
20 resolution of the disposition of the asset or liability in question is
21 reached, until the asset or liability has actually been distributed,
22 each party is subject to the standards provided in Section 721 as to
23 all activities that affect the assets or liabilities of the other party.
24 Once a particular asset or liability has been distributed, the duties
25 and standards set forth in Section 721 shall end as to that asset or
26 liability.

27 (c) From the date of separation to the date of a valid,
28 enforceable, and binding resolution of all issues relating to child
29 or spousal support and professional fees, each party is subject to
30 the standards provided in Section 721 as to all issues relating to the
31 support and fees, including immediate, full, and accurate
32 disclosure of all material facts and information regarding the
33 income or expenses of the party.

34 ~~SEC. 3.~~

35 *SEC. 4.* Section 2105 of the Family Code is amended to read:

36 2105. (a) Except by court order for good cause, before or at
37 the time the parties enter into an agreement for the resolution of
38 property or support issues other than pendente lite support, or, if
39 the case goes to trial, no later than 45 days before the first assigned
40 trial date, each party, or the attorney for the party in this matter,

1 shall serve on the other party a final declaration of disclosure and
2 a current income and expense declaration, executed under penalty
3 of perjury on a form prescribed by the Judicial Council, unless the
4 parties mutually waive the final declaration of disclosure. The
5 commission of perjury on the final declaration of disclosure by a
6 party may be grounds for setting aside the judgment, or any part
7 or parts thereof, pursuant to Chapter 10 (commencing with Section
8 2120), in addition to any and all other remedies, civil or criminal,
9 that otherwise are available under law for the commission of
10 perjury.

11 (b) The final declaration of disclosure shall include all of the
12 following information:

13 (1) All material facts and information regarding the
14 characterization of all assets and liabilities.

15 (2) All material facts and information regarding the valuation
16 of all assets that are contended to be community property or in
17 which it is contended the community has an interest.

18 (3) All material facts and information regarding the amounts of
19 all obligations that are contended to be community obligations or
20 for which it is contended the community has liability.

21 (4) All material facts and information regarding the earnings,
22 accumulations, and expenses of each party that have been set forth
23 in the income and expense declaration.

24 (c) In making an order setting aside a judgment for failure to
25 comply with this section, the court may limit the set aside to those
26 portions of the judgment materially affected by the nondisclosure.

27 (d) The parties may stipulate to a mutual waiver of the
28 requirements of subdivision (a) concerning the final declaration of
29 disclosure, by execution of a waiver under penalty of perjury
30 entered into in open court or by separate stipulation. The waiver
31 shall include all of the following representations:

32 (1) Both parties have complied with Section 2104 and the
33 preliminary declarations of disclosure have been completed and
34 exchanged.

35 (2) Both parties have completed and exchanged a current
36 income and expense declaration, that includes all material facts
37 and information regarding that party's earnings, accumulations,
38 and expenses.

39 (3) Both parties have fully complied with Section 2102 and
40 have fully augmented the preliminary declarations of disclosure,

1 including disclosure of all material facts and information
2 regarding the characterization of all assets and liabilities, the
3 valuation of all assets that are contended to be community property
4 or in which it is contended the community has an interest, and the
5 amounts of all obligations that are contended to be community
6 obligations or for which it is contended the community has
7 liability.

8 (4) The waiver is knowingly, intelligently, and voluntarily
9 entered into by each of the parties.

10 ~~(5) Each party understands that, by signing this waiver under~~
11 ~~penalty of perjury, the judgment shall be set aside for any~~
12 ~~noncompliance with any disclosure requirements set forth in this~~
13 ~~chapter and the court may take any other action deemed necessary.~~

14 ~~(c) If a court enters a judgment when the parties have failed to~~
15 ~~comply with all disclosure requirements of this section, the court~~
16 ~~shall set aside the judgment. The failure to comply with the~~
17 ~~disclosure requirements does not constitute harmless error.~~

18 (5) *Each party understands that this waiver does not limit the*
19 *legal disclosure obligations of the parties, but rather is a statement*
20 *under penalty of perjury that those obligations have been fulfilled.*
21 *Each party further understands that noncompliance with those*
22 *obligations will result in the court setting aside the judgment.*

23 ~~SEC. 4.~~

24 SEC. 5. Section 2106 of the Family Code is amended to read:

25 2106. Except as provided in subdivision (d) of Section 2105
26 or in Section 2110, absent good cause, no judgment shall be
27 entered with respect to the parties' property rights without each
28 party, or the attorney for that party in this matter, having executed
29 and served a copy of the final declaration of disclosure and current
30 income and expense declaration. Each party shall execute and file
31 with the court a declaration signed under penalty of perjury stating
32 that service of the final declaration of disclosure and current
33 income and expense declaration was made on the other party or
34 that service of the final declaration of disclosure has been waived
35 pursuant to subdivision (d) of Section 2105 or in Section 2110.

36 ~~SEC. 5.~~

37 SEC. 6. Section 2107 of the Family Code is amended to read:

38 2107. (a) If one party fails to serve on the other party a
39 preliminary declaration of disclosure under Section 2104 or a final
40 declaration of disclosure under Section 2105, or fails to provide

1 the information required in the respective declarations with
2 sufficient particularity, and if the other party has served the
3 respective declaration of disclosure on the noncomplying party,
4 the complying party may, within a reasonable time, request
5 preparation of the appropriate declaration of disclosure or further
6 particularity.

7 (b) If the noncomplying party fails to comply with a request
8 under subdivision (a), the complying party may do either or both
9 of the following:

10 (1) File a motion to compel a further response.

11 (2) File a motion for an order preventing the noncomplying
12 party from presenting evidence on issues that should have been
13 covered in the declaration of disclosure.

14 (c) If a party fails to comply with any provision of this chapter,
15 the court shall, in addition to any other remedy provided by law,
16 impose money sanctions against the noncomplying party.
17 Sanctions shall be in an amount sufficient to deter repetition of the
18 conduct or comparable conduct, and shall include reasonable
19 attorney's fees, costs incurred, or both, unless the court finds that
20 the noncomplying party acted with substantial justification or that
21 other circumstances make the imposition of the sanction unjust.

22 (d) *If a court enters a judgment when the parties have failed to*
23 *comply with all disclosure requirements of this chapter, the court*
24 *shall set aside the judgment. The failure to comply with the*
25 *disclosure requirements does not constitute harmless error.*

26 (e) Upon the motion to set aside judgment, the court may order
27 the parties to provide the preliminary and final declarations of
28 disclosure that were exchanged between them. Absent a court
29 order to the contrary, the disclosure declarations shall not be filed
30 with the court and shall be returned to the parties.

31 ~~SEC. 6.—Section 2122 of the Family Code is amended to read:~~
32 ~~2122.—The grounds and time limits for a motion to set aside a~~
33 ~~judgment, or any part or parts thereof, are governed by this section~~
34 ~~and shall be one of the following:~~

35 ~~(a) Actual fraud where the defrauded party was kept in~~
36 ~~ignorance, or in some other manner was fraudulently prevented~~
37 ~~from fully participating in the proceeding. An action or motion~~
38 ~~based on fraud shall be brought within one year after the date on~~
39 ~~which the complaining party either did discover, or should have~~
40 ~~discovered, the fraud.~~

~~(b) An action or motion based on perjury in the preliminary or final declaration of disclosure, the waiver of the final declaration of disclosure, or in the current income and expense statement shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the perjury.~~

~~SEC. 7.~~

SEC. 7. Section 2122 of the Family Code is amended to read:

2122. The grounds and time limits for a motion to set aside a judgment, or any part or parts thereof, are governed by this section and shall be one of the following:

(a) Actual fraud where the defrauded party was kept in ignorance or in some other manner, ~~other than his or her own lack of care or attention~~, was fraudulently prevented from fully participating in the proceeding. An action or motion based on fraud shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the fraud.

(b) Perjury. An action or motion based on perjury in the preliminary or final declaration of disclosure, *the waiver of the final declaration of disclosure*, or in the current income and expense statement shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the perjury.

(c) Duress. An action or motion based upon duress shall be brought within two years after the date of entry of judgment.

(d) Mental incapacity. An action or motion based on mental incapacity shall be brought within two years after the date of entry of judgment.

(e) As to stipulated or uncontested judgments or that part of a judgment stipulated to by the parties, mistake, either mutual or unilateral, whether mistake of law or mistake of fact. An action or motion based on mistake shall be brought within one year after the date of entry of judgment.

(f) *Failure to comply with the disclosure requirements of Chapter 9 (commencing with Section 2100). An action or motion based on failure to comply with the disclosure requirements shall be brought within one year after the date on which the complaining party either discovered, or should have discovered, the failure to comply.*

1 *SEC. 8. This act shall apply to any judgment that becomes*
2 *final on or after January 1, 2002.*

3 *SEC. 9. No reimbursement is required by this act pursuant to*
4 *Section 6 of Article XIII B of the California Constitution because*
5 *the only costs that may be incurred by a local agency or school*
6 *district will be incurred because this act creates a new crime or*
7 *infraction, eliminates a crime or infraction, or changes the penalty*
8 *for a crime or infraction, within the meaning of Section 17556 of*
9 *the Government Code, or changes the definition of a crime within*
10 *the meaning of Section 6 of Article XIII B of the California*
11 *Constitution.*

